

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CORREY MITCHELL,

Plaintiff,

v.

ROXANNE RAMOS,

Defendant.

Case No. [23-cv-03588-JSW](#)

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT**

Re: Dkt. No. 20

INTRODUCTION

Plaintiff, a California prisoner proceeding pro se, filed this civil rights complaint under 42 U.S.C. ' 1983 against a dentist at Salinas Valley State Prison ("SVSP") where he was treated for tooth pain. Defendant filed a motion for summary judgment (ECF No. 20), Plaintiff filed an opposition (ECF No. 28), and Defendants filed a reply brief (ECF No. 29). For the reasons discussed below, the motion for summary judgment is GRANTED.

BACKGROUND

Defendant Dr. Ramos received a request for dental care from on July 19, 2022, from Plaintiff complaining of pain of 7 out of 10 in the right side of his face. She saw him the next day, conducted tests, and provided treatment for the caries on tooth #19. That evening Plaintiff was experiencing pain on a scale of 8 out 10, and the dentist on duty prescribed pain medication. The next day, Dr. Ramos examined Plaintiff again, conducted further tests, and removed tooth #15. Plaintiff continued to suffer severe pain over the next few days, during which time he received emergency medical care from other doctors and nurses (who are not defendants), including an EKG, antibiotics, and more pain medication. While in the clinic on July 23, 2022, he experienced dizziness that led to a fall while seeking treatment for his pain. Dr. Ramos examined him again on July 25, 2022, and after conducting further tests, removed tooth #19. Plaintiff's pain related to his

teeth stopped.

Plaintiff claims Dr. Ramos was deliberately indifferent to his dental needs because she failed to provide him pain medication or antibiotics, extracted tooth #15 unnecessarily instead of tooth #19, and caused Plaintiff unnecessary pain while extracting tooth #19. The Court found these allegations, when liberally construed, stated cognizable claims for the violation of his Eighth Amendment rights and for medical malpractice (negligence) under California law.

Defendants submit the declaration of Dr. Ramos, who explained the reasons for her diagnoses and treatment and opined it was medically necessary under the circumstances, as well as that of another licensed dentist, Dr. Archibald, who reviewed the records of Plaintiff's care, and concluded as follows:

Plaintiff's claims of deliberate indifference, negligent dental care, wrongful removal of tooth #15, and delayed/failed diagnosis of tooth #19 are unfounded. Plaintiff's toothache was successfully treated within 6 days, including a weekend, from the day his request was received. He was seen multiple times, appropriate tests and imaging were obtained at each visit, and diagnoses were accurate given the varied symptoms presented. Tooth #15 was not wrongfully removed since it was symptomatic, non-functional, periodontally involved, supererupted, and had root caries (cavity on the root). At no time during this treatment were antibiotics appropriate per ADA guidelines. The final diagnosis for tooth #19 was not evident at the beginning of treatment as the progression of pulpal death was occurring. Defendant was attempting to save tooth #19, which presented without radiographic evidence and test results leading to the need for extraction. Plaintiff was consistently provided with sufficient pain relief and medication. Should Plaintiff have required additional pain relief, he was able to obtain free over-the-counter NSAIDs from the Canteen. Consequently, in Dr. Archibald's opinion, from the moment Defendant saw Plaintiff on July 20, 2022, through the extraction of tooth #19 on July 25, 2022, Defendant provided care in line with the standard of care expected of a dentist in the same or similar circumstances.

(ECF No. 20-4 at ¶ 24.)

DISCUSSION

I. Standard of Review

Summary judgment is proper where the pleadings, discovery and affidavits show there is "no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Material facts are those which may affect the outcome of

the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,248 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. *Id.*

The party moving for summary judgment bears the initial burden of identifying those portions of the pleadings, discovery and affidavits which demonstrate the absence of a genuine issue of material fact. *Celotex Corp.v. Cattrett*, 477 U.S. 317, 323 (1986). When the moving party has met this burden of production, the nonmoving party must go beyond the pleadings and, by its own affidavits or discovery, set forth specific facts showing there is a genuine issue for trial. *Id.* If the nonmoving party fails to produce enough evidence to show a genuine issue of material fact, the moving party wins. *Id.*

At summary judgment, the judge must view the evidence in the light most favorable to the nonmoving party. *Tolan v. Cotton*, 570 U.S. 650, 656-57 (2014). If more than one reasonable inference can be drawn from undisputed facts, the trial court must credit the inference in favor of the nonmoving party. *Hunt v. Cromartie*, 526 U.S. 541, 552 (1999).

II. Analysis

1. Legal Standard

Deliberate indifference to a prisoner's serious medical needs violates the Eighth Amendment's proscription against cruel and unusual punishment. *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976). Serious medical needs may include dental care. *Hunt v. Dental Dep't*, 865 F.2d 198, 200 (9th Cir. 1989). To prevail on such a claim, a prisoner-plaintiff must show a "serious medical need," and that the defendants' "response to the need was deliberately indifferent." *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006).

A prison official is deliberately indifferent if the "official knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it." *Farmer v. Brennan*, 511 U.S. 825, 847 (1994). An official is liable if the official "knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Id.* at 837. So, for deliberate indifference to be

1 established, there must be a purposeful act or failure to act on the part of the defendant and
 2 resulting harm. *Simmons v. G. Arnett*, 47 F.4th 927, 933 (9th Cir. 2022). “Under this standard, an
 3 inadvertent failure to provide adequate medical care, differences of opinion in medical treatment,
 4 and harmless delays in treatment are not enough to sustain an Eighth Amendment claim.” *Id.*
 5 Neither is a claim of medical malpractice or negligence. *See Toguchi v. Chung*, 391 F.3d 1051,
 6 1060 (9th Cir. 2004).

7 “A difference of opinion between a prisoner-patient and prison medical authorities
 8 regarding treatment does not give rise to a § 1983 claim.” *Franklin v. Oregon*, 662 F.2d 1337,
 9 1344 (9th Cir. 1981). Similarly, a “mere difference of medical opinion” among medical
 10 professionals as to the need to pursue one course of treatment over another does not raise a
 11 “material question of fact” regarding the issue of deliberate indifference. *Toguchi*, 391 F.3d at
 12 1058; *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989). “[T]o prevail on a claim involving
 13 choices between alternative courses of treatment, a prisoner must show that the chosen course of
 14 treatment was medically unacceptable under the circumstances, and was chosen in conscious
 15 disregard of an excessive risk to [the prisoner's] health.” *Toguchi*, 391 F.3d at 1058 (citation and
 16 internal quotations omitted).

17 The elements of a claim for professional negligence are: (1) the duty of the professional to
 18 use such skill, prudence, and diligence as other members of his profession commonly possess and
 19 exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent
 20 conduct and the resulting injury; and (4) actual loss or damage resulting from the professional’s
 21 negligence.” *Paul v. Patton*, Cal.Rptr.3d 830, 835 (Cal. Sup. Ct. 2015).

22 2. Analysis

23 No rational fact-finder could conclude from the evidence that Dr. Romero’s care for
 24 Plaintiff’s medical needs amounted to deliberate indifference or negligence. It is undisputed
 25 Plaintiff was seen and treated promptly on multiple occasions, and his tooth pain was eradicated
 26 within six days. Plaintiff’s medical records are clear that he received multiple tests and x-rays at
 27 each examination, various forms of treatment for his pain, and extensive dental procedures. There
 28 is no evidence from a qualified expert in dentistry or medicine that the diagnoses or treatment

Plaintiff received were inaccurate, medically inappropriate for his condition or symptoms, or otherwise incompatible with the standard of care required of a reasonable dentist. Under *Toguchi* and *Sanchez*, Plaintiff's lay opinion disagreeing with the treatment he received does not create a triable issue as to whether Defendant was deliberately indifferent to his medical needs. And the only reasonable inference that can be drawn from Dr. Archibald's expert opinion is that Dr. Ramos's removal of Plaintiff's two teeth, her treatment of Plaintiff's pain, her decision not to prescribe antibiotics, and the pain Plaintiff experienced was not negligent (or deliberately indifferent) under the circumstances, but was driven by the condition of Plaintiff's teeth and surrounding tissue. Consequently, there is not triable issue as to whether Dr. Ramos violated Plaintiff's Eighth Amendment rights or committed malpractice under state law.

Plaintiff's arguments to the contrary are unavailing. Plaintiff's contention that Dr. Ramos provided inadequate care because she relied upon obsolete x-rays from 2015 is not reasonably supported by the evidence. The evidence — medical records and Dr. Ramos's declaration — is uncontradicted that Dr. Ramos ordered a full set of x-rays on July 22, 2022. To whatever extent she may have relied upon earlier x-rays in her treatment decisions prior to that date, there is no evidence suggesting, let alone supporting a reasonable conclusion, that such treatment was medically improper or that a new set of x-rays taken earlier would have required different medical care than what he received. Indeed, as discussed above, the only reasonable conclusion that can be drawn from the evidence is that Dr. Ramos provided proper medical care to Plaintiff before and after the x-rays on July 22, 2022.

Plaintiff's contention he had an infection and needed antibiotics is not supported by the medical evidence. The only evidence to this effect is that that on July 23, 2022, Plaintiff received a diagnosis in the emergency room that he *possibly* had an infection or abscess and was prescribed antibiotics as a *prophylactic* measure against such a possibility. There is no evidence anyone with medical or dental expertise, including Dr. Ramos and Dr. Archibald, found a sign of an actual infection warranting antibiotics. The evidence that after extracting tooth #19, Dr. Ramos also found signs of a *possible* abscess and granuloma in the tooth does not, as Dr. Archibald points out, constitute a diagnosis of he had an abscess or infection or had a medical need for antibiotics or any

1 different care than Dr. Ramos provided.

2 Plaintiff asserts he could not take ibuprofen (which was prescribed to him) due to kidney
3 disease, but Plaintiff indicates he told Dr. Ramos he did not have such a disease, and there is no
4 evidence any medical professional opined ibuprofen was contraindicated for him. Plaintiff's
5 assertion that he never told Dr. Ramos the pain was coming from his upper mouth is irrelevant
6 because such a statement was not a basis for her decision to remove tooth #19 or any other
7 treatment she provided. Plaintiff's contention Dr. Ramos failed to use sufficient anesthesia during
8 the second extraction is simply a lay opinion that is contradicted by the expert evidence she used a
9 medically appropriate amount of anesthesia. The pain Plaintiff experienced therefore cannot
10 reasonably be attributed to deliberate indifference or negligence by Dr. Ramos. Plaintiff's
11 assertion there were alternate treatment options is not supported by any evidence any such
12 alternatives were medically appropriate under the circumstances, nor does the availability of
13 alternative treatments does not, on its own, render the option Dr. Ramos chose deliberately
14 indifferent or negligent.

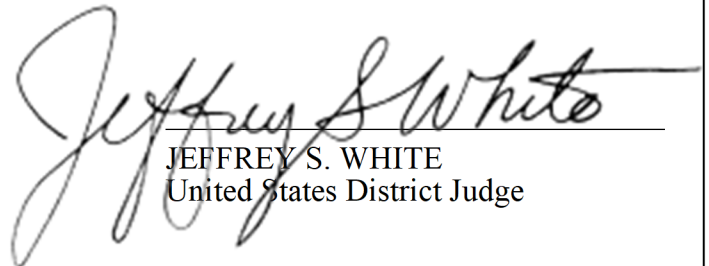
15 CONCLUSION

16 For the reasons discussed above, there is no triable issue of fact that, if resolved in
17 Plaintiff's favor, would support a reasonable conclusion Dr. Ramos was deliberately indifferent or
18 negligent in treating Plaintiff's dental condition. Therefore, her motion for summary judgment is
19 GRANTED.

20 The clerk shall enter judgment and close the file.

21 **IT IS SO ORDERED.**

22 Dated: January 2, 2025

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25 JEFFREY S. WHITE
26 United States District Judge
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